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European Labour Law

Posting of workers

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Mobility of workers within the EU

Legal forms of transnational movement of workers:

1. Free movement of services
2. Free movement of workers

Free movement of workers or services?

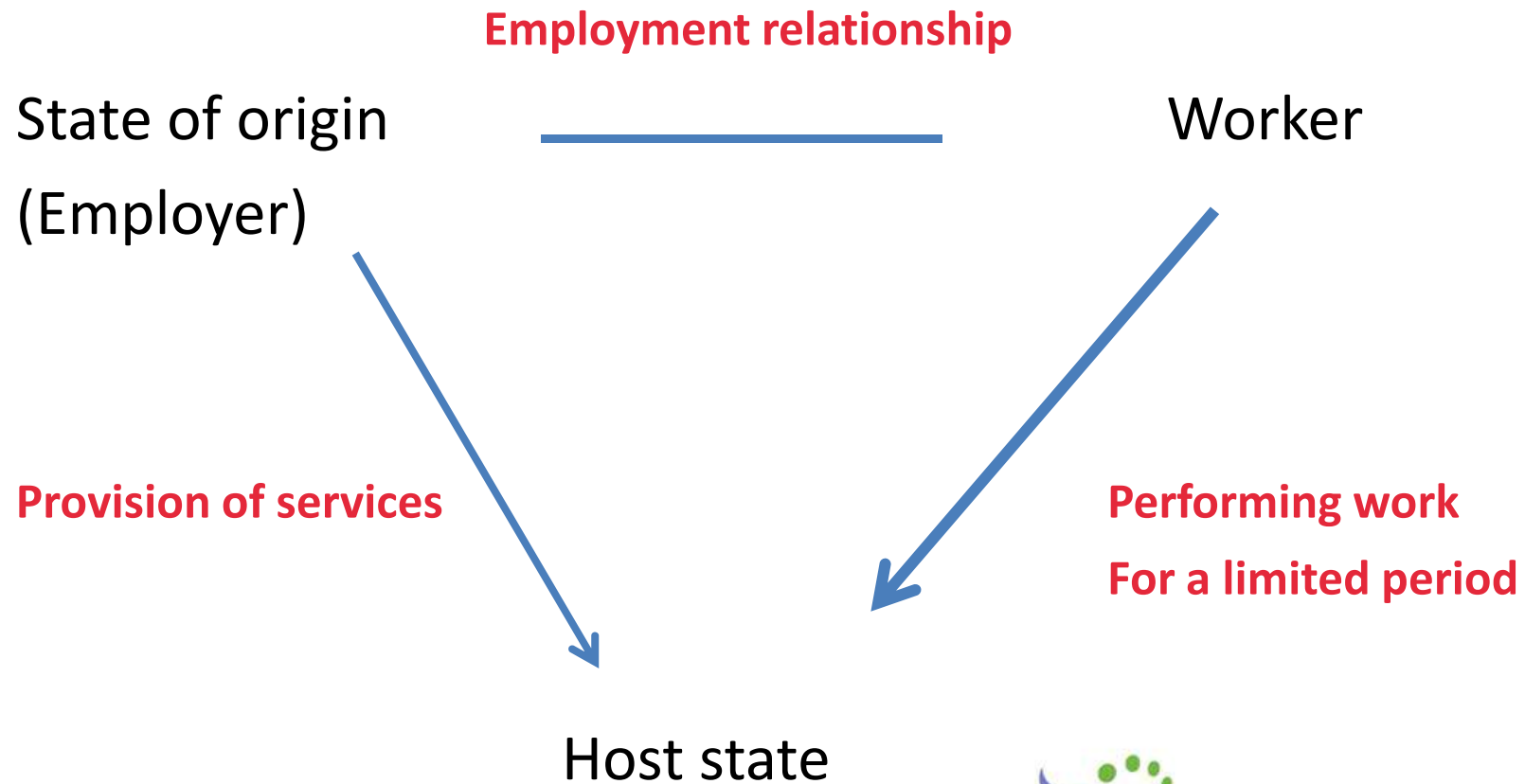
Rush Portuguesa Lda v Office national d'immigration (C-113/89.)

Please read the extract of the judgment!

Discussion:

Which fundamental freedom applies in this case?

Posting of workers in the framework of transnational provision of services



Posting of workers in the framework of transnational provision of services

Which law shall be applied for the posted worker?

- Conflict of laws
- Labour law, social security law, tax law concerns

Relevant sources:

- International Private Law (Rome Convention)
- Rome I Regulation (Regulation 593/2008 on the law applicable to contractual obligations)
- 96/71/EC Directive on posting of workers in the framework of the provision of services

Directive 96/71/EC on posting of workers in the framework of the provision of services

Controversial aims:

- Guarantee free movement of services
- Guarantee minimum level of protection for workers

Motivation: fear of ‚social dumping‘

Tool: no uniformisation, but harmonisation, by determining the applicable law

Directive 96/71/EC on posting of workers in the framework of the provision of services

3 types of posting:

1. Posting is based on a contract between the sending employer and the beneficiary
2. Group of company
3. Temporary agency work

Directive 96/71/EC on posting of workers in the framework of the provision of services

Common features of all three kinds of posting:

- ‚Temporary‘ work abroad - ‚for a limited period‘?
- Working under the control and direction of the host, user undertaking
- Employment relationship remains with the posting employer
- Return to the MS of origin at the end of posting

Directive 96/71/EC on posting of workers in the framework of the provision of services

Consequence of posting for the posted worker:

The ,hard-core' provisions of the host MS shall be applied to them:

- (a) maximum work periods and minimum rest periods;
- (b) minimum paid annual holidays;
- (c) the minimum rates of pay, including overtime rates;
- (d) the conditions of hiring-out of workers;
- (e) health, safety and hygiene at work;
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- (g) equality of treatment between men and women and other provisions on non-discrimination.

Directive 96/71/EC on posting of workers in the framework of the provision of services

The ,hard-core' provisions of the host MS,

BUT: More favourable conditions

In which legal act shall be declared the provisions ?

e.g. Collective agreement which have been declared universally applicable

Laval case (C-341/05.)

Please read the extracts form the Laval case (C-341/05.)!

Discussion

Main findings of the Laval case

Future prospects

2 new proposals:

Proposal for a Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, (Brussels, 21.3.2012 COM(2012) 131 final; 2012/0061 (COD))

Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services; (Brussels, 21.3.2012. COM(2012) 130 final; 2012/0064 (APP))